

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM JULY 1, 1969
THROUGH SEPTEMBER 30, 1969
VOLUME 136

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From July 1, 1969

Through September 30, 1969

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1969 through September 30, 1969, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

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Executive Assistant

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Deputy Attorney General

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OPINIONS

July 10, 1969

Honorable Lee A. Barclay, Sr.
Treasurer and Business Manager
Alabama College
Montevallo, Alabama 35115

Colleges and Universities—Trust and Trustees—Funds.

Alabama College may invest surplus funds in only those investments authorized by Chapter 5, Title 58, Code of Alabama 1940, Recomplied 1958, as amended.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion, bearing date of June 25, 1969, is as follows:

“Periodically Alabama College has surplus funds to invest in relatively short term securities. These have been invested in U. S. government 91 day bills or six months notes. Some of our banker friends have suggested that they be invested in other securities in order to increase the yield. They have particularly suggested the following:

“Banks for Cooperatives—Debentures
Federal Intermediate Credit Bank—Debentures
Federal Land Bank—Bonds
Federal National Mortgage Association—Debentures
Federal Home Land Bank.

“The above are U. S. government owned corporations.

“Another suggestion was ‘Bankers Acceptances’ on New York Banks.

“I would appreciate it if you would let me know if it is possible for us to invest in these issues. If there are other obligations in which state colleges and universities may invest I would appreciate knowing about them.”

In 11 C. J. Colleges and Universities, Section 18, Page 991, it was said: “. . . While the funds of a college or a university must not be used for the personal and private ends of an individual, the institution may invest its funds in proper securities, . . .” Quarterly Report of Attorney General, Vol. 76, Page 25.

It is assumed that the surplus funds are not those held by virtue of a trust fund which states the only type of securities in which investment may be made.

It is noted that neither Title 52, Sections 456-473, Code of Alabama 1940, Recompiled 1958, nor any other Code Sections contains provisions directing the type of investments of surplus funds by colleges as is done for city and county funds by Title 37, Sections 273 and 273(1), Code of Alabama 1940, Recompiled 1958.

Since investment of surplus funds by the college would be the act of one acting in a fiduciary capacity, such investments should conform to the laws providing for investment of trust estates.

The Code Sections with investment of trust estate are set out in Chapter 5 of Title 58, Code of Alabama 1940, Recompiled 1958, as amended.

Your attention is directed to Title 58, Section 47, Code of Alabama 1940, Recompiled 1958, which provides, in part, as follows:

“§ 47. Legal investments of trust funds by fiduciaries. — . . .

(a) Bonds or other interest-bearing obligations of the United States of America, or payment of which the United States of America has guaranteed as to both principal and interest. (b) Bonds issued by the federal land bank, under the act of congress of the United States of America, designated as ‘the Federal

Farm Loan Act,’ and acts amendatory thereof. . . .”

This section gives specific approval to investment in bonds issued by the Federal Land Bank.

The other securities, namely, Banks for Cooperatives — Debentures, Federal Intermediate Credit Bank—Debentures, Federal National Mortgage Association—Debentures and Federal Home Loan Bank are not obligations, the payment of which is guaranteed by the United States Government as to both principal and interest. They are what is termed “agency issues” for which no express liability is assumed by the United States Government.

I find no listing of Federal Home Land Bank and it is assumed this was intended to be Federal Home Loan Bank. In any event there is no authorization for such investment.

“Bankers Acceptances” on New York Banks are not authorized by the Code as approved legal investments for fiduciaries.

My answer to the question as to which of the named issues in which you may invest is that the only legal investment you may make of those investments named by you is in Federal Land Bank — Bonds as such are permitted under Title 58, Section 47(1), Code of Alabama 1940, Recompiled 1958.

Yours very truly,

MacDONALD GALLION
Attorney General

July 11, 1969

Honorable Marvin P. Lynn
Chairman, Etowah County Jury Commission
Etowah County Courthouse
Gadsden, Alabama 35901

Jurors and Juries.

Jury Commissions are not authorized by law to divide the names of persons on the jury roll into two separate groups and to maintain two separate jury roll books, except in counties having courts requiring Grand and Petit Juries or Petit Juries established for and held in separate territorial subdivisions of such counties.

Opinion by Assistant Attorney General Hall.

Dear Mr. Lynn:

Your request for an official opinion bearing date of June 25, 1969, is as follows:

"We, the members of the Jury Commission of Etowah County, would appreciate a ruling from your office on some work which we have discussed among ourselves.

"At present, we have approximately 12,000 names, male and female, on our jury roll.

"The question we would like a ruling on is whether or not it would be legal to equally divide these 12,000 names into two separate groups and make two complete books.

"If we can legally do this, we can always have half of our jury roll completely purged and as up to date as it would be possible to have it.

"We only have one clerk and it is not possible for this one clerk to revise our one big book completely between court terms."

Title 30, Section 20, Code of Alabama 1940 (Recompiled 1958), as amended, requires the Jury Commission to meet in the courthouse annually between the first day of August and the twentieth day of December and to "make in a well-bound book a roll containing the name of every citizen living in the county who possesses the qualifications herein prescribed and who is not exempted by law from serving on juries. The roll shall be arranged alphabetically and by precincts in their numerical order and the Jury Commission shall cause to be written on the roll opposite every name placed thereon the occupation, residence, and place of business on each card."

Title 30, Section 23, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"Whenever the names in the jury box are exhausted or so far depleted that they will probably be exhausted at the next draw-

ing of jurors, the jury commission must proceed to make and certify a new roll and deposit the names in the box in all respects as provided in this chapter, and for this purpose the jury commission must meet whenever it is necessary and refill the jury box."

The only provision in the Code for maintaining separate jury rolls and jury boxes in counties where courts requiring Grand and Petit Juries or Petit Juries are established for and held in territorial subdivisions of such counties. I do not find that Etowah County falls in this category as do Jefferson, Barbour, and a few other counties.

Therefore, the answer to your question is in the negative.

Yours very truly,

MacDONALD GALLION
Attorney General

July 14, 1969

Honorable A W. Steineker, Jr.

Chief Examiner

Department of Examiners of Public Accounts
Montgomery, Alabama 36104

Courts—Clerks of Circuit Courts—Costs and Fees—Fines—
Forfeitures.

1. Clerks of Circuit Courts may not legally accept partial payments, during the pendency of an agreement by such defendants to plead guilty, to apply on court costs and fine to be thereafter imposed in the event such guilty plea is entered.

2. Where there has been a partial payment of fine and costs pending an agreement by a defendant to plead guilty, and the defendant dies before such plea is entered, there is no legal authority to convert the funds thus illegally collected to the use of the court or of the city or county, as the case may be, but such funds should be paid to the legal representative of the decedent or to his estate.

3. In the event a live defendant who has agreed to plead guilty, but has not done so fails to appear on the date set for sentencing, any partial payments made by him are assets belonging to him. If his bond is thereupon forfeited by order of the court, such funds cannot be applied against the forfeiture of a bond. However, in the case of a deceased defendant, since the defendant obviously cannot appear and the bondsmen cannot produce him, there can be no forfeiture of the bond, and the funds should be paid to the legal representative of the decedent or to his estate.

Opinion by Assistant Attorney General Hall.

Dear Mr. Steineker:

Your request for an official opinion bearing date of June 16, 1969, is as follows:

"Rule No. 67 of the Rules of Court of the Tenth Judicial Circuit of Alabama applying at Birmingham, Alabama, adopted October 9, 1964, effective January 1, 1965, reads as follows:

"During the pendency of any agreement by any defendant in any criminal or quasi-criminal case to plead guilty, as shown by an entry on the Judge's bench notes in the case, the Clerk is authorized to receive partial payments from time to time from the defendant to apply on the court costs and fine to be thereafter imposed. In the event the defendant dies before his plea of guilty is entered, any payments made to the Clerk by him during the pendency of the agreement shall be applied as follows: (1) To the payment of Court costs in the case, (2) the balance, if a city appeal case, to the city from whose recorder's court the case was appealed; if a state case, the balance shall be paid into the General Fund of Jefferson County. When the appeal in a city appeal case is dismissed, all partial payments shall be applied (1) to the payment of court costs in the case, and (2) the balance, if any, applied to costs and judgment in the forfeiture case.

"The Clerk is authorized to receive partial payments from time to time, from any defendant in any criminal or quasi criminal case to apply on the court cost (and fine, if any), in the case, where any entry on the Judge's bench notes shows that the defendant has applied for probation, or has been placed on probation on condition that he pay the costs of the case.'

"At the present time, the Circuit Clerk of the Tenth Judicial Circuit accepts partial collections on those cases where there is an agreement by the defendant to plead guilty and the Judge has passed the case to another date in order for the defendant to have sufficient time to arrange to pay his fine and the cost of the Court.

"In an opinion of your office to Honorable Albert Lingo, Director of Public Safety, dated June 11, 1965, reported in Quarterly Report of Attorney General, Volume 119, page 46, it was held that neither a justice of the peace nor a county court may accept partial payment of fines. Apparently, this opinion would apply equally to the circuit courts. This opinion has given rise to the following questions regarding the Tenth Judicial Circuit:

"1. May the Clerk of the Circuit Court, under the facts stated above, accept partial payments of fines and costs?

"2. In event of death of the defendant prior to sentencing where there has been a partial payment of the fine and costs, may the funds paid in be applied in accordance with Rule 67 or is the case abated by death, necessitating a payment to the estate?"

"3. In event of forfeiture and failure to appear on the date for sentence, may the partial collections made by the defendant be applied on the forfeiture with the bondsmen being responsible for paying the rest of the amounts of the bond?"

"Your opinion on these matters will be greatly appreciated."

In answer to your Question No. 1, I know of no legal authority for the Clerk of the Circuit Court to accept partial payment of fines and costs under the facts stated in your letter. In an opinion reported in Quarterly Report of Attorney General, Vol. 119, at Page 46, it was held that neither a Justice of the Peace nor a county court may accept partial payment of fines and that neither a Justice of the Peace nor a county court may prorate a fine that has been assessed against a defendant. Likewise, in an opinion reported in Quarterly Report of Attorney General, Vol. 22, at Page 201, it was held that Justices of the Peace or county courts have no authority to accept payment of fines and costs in installments. In that opinion, it was stated that a case may be continued from time to time in the discretion of the court, but any alleged payment by defendant toward the payment of a prospective fine and costs is not a legal payment of said fine and costs to the court. See, also, the opinion reported in Quarterly Report of Attorney General, Vol. 37, at Page 102.

Of interest in this connection are the findings, conclusions, and order of Judge Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, in the case of **Tommy H. Beard v. State of Alabama**, Civil Action No. 2839-N, decided June 23, 1969, where a defendant in a criminal case entered into an agreement to plead guilty, but no plea of guilty was ever entered. The order recites that "this court is not aware of any law that says that it is a discretionary matter with any trial judge to require defendant to honor a previous agreement to plead guilty." The Court further said, "I know of no law that authorizes a State Circuit Judge, or any other Judge for that matter, to require a defendant to honor an agreement to plead guilty to the extent that the Court in effect enters a plea of guilty for him just because he has at some time previously agreed to plead guilty." Conceivably, a defendant could agree to plead guilty, and later change his mind and plead not guilty, as was done in the **Beard** case. Such being the case, there is no judgment of conviction outstanding against the defendant at the time the partial payments are made on some nebulous future fine and costs. Therefore, the Clerk has no legal authority to accept such payments.

In answer to your Question No. 2, since the payments previously collected by the Clerk could not be legally collected and there has never been a finding of guilt or sentence prior to death of the defendant, there

is no legal authority to convert the funds thus illegally collected to the use of the Court or of the city or county, as the case may be, but such funds should be paid to the legal representative of the decedent or to his estate.

In answer to your Question No. 3, since the payments previously made were illegally collected, they are assets belonging to the defendant, if he is alive, or to his estate if he is deceased. I do not think that such funds can be applied against the forfeiture of a bond.

Yours very truly,

MacDONALD GALLION
Attorney General

July 18, 1969

Honorable Robert M. Field
City Attorney
City Hall
P.O. Box 670

Anniston, Alabama 36201

Airports — Municipalities.

A suit to eject a lessee of a municipality with an airport commission should be brought in the name of the airport commission of such city.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your recent request for an official opinion of our office is as follows:

"Attached are copies of the Anniston City Code in reference to the creation of an Airport Commission. You will note the subtitles make reference to Title 4, Sections 21 through 36 of the Alabama Code.

"QUESTION: Does the Code of Alabama give a municipality the authority to appoint an airport commission with the duties and authority set out in the attached city code sections?

"QUESTION: In the event the answer to the preceding question is yes, reference is then made particularly to section 3.3 of the City Code. In the event the airport commission so formed wishes to eject a lease holder on the airport property, would the suit be brought in the name of the City of Anniston or the Airport Commission?

Your attention is directed to the provisions of Title 4, Section 27, Code of Alabama 1940, Recompiled 1958, which is as follows:

"When any municipality has acquired or set apart land for use as a municipal airport, the council, or other governing body, of

such municipality shall have the power and authority to develop the same into a municipal airport and to improve, equip, maintain, operate, regulate, and police the same. Such governing body may adopt regulations for the government of the municipal airports of such municipality, provide penalties for violation of such regulations, and establish and collect fees, tolls and charges for the use of such airports or parts thereof or any facilities thereof or any equipment thereof. The power and authority committed by this section to the governing body of such municipality may be by it conferred upon a board or officer of such municipality, or upon any board created by law for the government of the parks of such municipality, subject always, however, to the superior control of such governing body."

Under the foregoing Code section, clearly a municipality may, by appropriate action, establish a municipal airport commission or other governing body. Suits brought in behalf of such municipal governing body should be brought in the name of the airport commission of such city.

The provisions of Title 4, Section 29, Code of Alabama 1940, Re-compiled 1958, should be noted by you also.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

July 23, 1969

Honorable Dennis Porter
Town Attorney
Town of Chatom
Chatom, Alabama 36518

Licenses—Municipalities—Public Utilities—Sales Tax—Taxation.

The applicability of the tax imposed by Act No. 21, Acts of Alabama 1969, approved May 14, 1969, to certain utility services furnished by a municipal utilities board discussed generally.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated May 30, 1969, is as follows:

"We are attorneys for the Town of Chatom, an incorporated municipality in Washington County, Alabama.

"We are also attorneys for the Utilities Board of the Town of Chatom which was originally incorporated as a public corporation as the Water Works Board of the Town of Chatom under the provisions of Title 37, Sections 394-402 inclusive, and later by amendment to the Certificate of incorporation, was amended to change the name to the Utilities Board of the Town of Chatom and broaden the powers to authorize this corporation to furnish other utility services. This amendment was under the provision of Act Number 175 of the 1951 Regular Session of the Alabama Legislature as amended since that time.

"The Utilities Board of the Town of Chatom furnishes water to the inhabitants and customers in the Town of Chatom and will within about 30 days begin furnishing sewer services when the new sewage system goes into operation.

"The Alabama Legislature at the 1969 Special Session passed House Bill number 28 which is Act Number 21 of the 1969 Special Session levying a four percent gross receipt tax or privilege or license tax on certain utility services and the act provides the effective date thereof as being September 1, 1969. "The Town of Chatom is one of the customers that is served by the Utilities Board, in that the Utilities Board furnishing water to the city hall, fire department, public library and other municipal buildings and the Town of Chatom pays a water bill to the Utilities Board for these services and will also be a sewer customer. In addition to that the Town of Chatom has a contract with the Utilities Board whereby the Town of Chatom pays a rental of \$5.00 per month per fire hydrant to the Utilities Board to enable the Town of Chatom to use all of the water needed for the municipal fire department in providing fire protection.

"In addition to that we have a public housing project for low income people which is owned by a public nonprofit corporation, the Housing Authority of Washington County, Alabama, but the cost of which was paid for by the Public Housing Administration with federal funds. At the time these units in the housing project were constructed there was no water main serving the area where the units were constructed. With federal money, the Public Housing Administration, an agency of the United States of America paid for the cost of installing, and all material and labor, in extending the water mains to the housing project. The Government will recover the cost of installing these water mains, materials, labor etc. by retaining the water bill each month of each tenant in the housing project until the full cost, with interest, has been recovered by the Government and after that has been done, then the local Housing Authority will pay to the Utilities Board the water bill each month. The units are rented to the tenants for a flat monthly rental which includes their water bill, and each month the

Utilities Board reads the meters and submits a bill for each customer to the local Housing Authority, but instead of the local Housing Authority paying this bill to the Utilities Board, that amount of the total bills for these tenants is credited on the balance of the indebtedness owed for constructing the water mains to, and into the project, and the Utilities Board does not actually receive any money for water consumed by these tenants, and will not receive any payment until the full amount of the cost paid for by the Government, has been recovered.

"In two or three instances individuals have been allowed to do exactly the same thing by paying for the extension of a water main to their residence or business. They read the meter and retain the water bill and in some instances one-half the water bill each month until they have recovered the cost of such extension.

"All water bills are paid between the first of the month and the 10th of the month for the preceeding month.

"Will you please furnish us, for the Town of Chatom and the Utilities Board, your official opinion on the following questions:

"1. Are we correct in interpreting Act Number 21 of the Special Session 1969 of the Legislature in concluding that the tax on such gross receipts does not cover sewer services furnished by the Utilities Board described above and that the proceeds received by the Board from sewer customers for sewage services would be exempt from this tax?

"2. The effective date of said Act Number 21 is September 1, 1969, would be the receipts from the sale of water in August 1969 but not actually paid until after September 1, 1969 be subject to this tax?

"3. Would the water bill of the customers in the housing project as described above be subject to this tax at this time due to the fact that all of the water bills are applied on the cost of installing the water mains and services to these projects.

"4. Would the water bill of an individual who paid for an extension for the main to his residence or business be covered by this tax even though he retains his water bill in part or in full until such time as he recovers the full cost of extending the line to his residence or business?

"5. Would the water bill of the Town of Chatom, a municipality be subject to this tax? As stated above the Town of Chatom is a water customer for the city hall, fire department, park, etc.

"6. Would the \$5.00 per month per hydrant rental paid by the Town of Chatom to the Utilities Board be subject to this tax? This rental is paid by the Town of Chatom to the Utilities Board

as a flat agreed sum between the Town of Chatom and the Utilities Board to enable the Town of Chatom to have water for fire protection.

"7. As we read the definition of 'person' in Act Number 21, it appears that all Governmental agencies, city, county, state and national are subject to this tax. Are we correct in interpreting this Act as levying the tax on water applicable to all Governmental agencies, including cities, counties, in the state of Alabama and an agency of the United States of America?

"We shall very much appreciate your official opinion answering these questions for both the Town of Chatom and the Utilities Board of the Town of Chatom."

Reference is made to your letter of June 27, 1969, in regard to the problems presented by your request, to which is attached a copy of the fire hydrant rental contract entered into by and between the Town of Chatom and the Utilities Board of said Town.

The tax to which your request refers is levied by Act No. 21, Acts of Alabama 1969, approved May 14, 1969, hereinafter called "the statute."

Some of the provisions of the statute which are material to the problems presented read as follows:

"Section 1. **Definitions.** Wherever used in this Act, unless a different meaning clearly appears in the context, the following terms shall be given the following respective interpretations.

"Domestic water" shall mean all water except water that is sold to persons for use or consumption in industrial processes and not primarily for human consumption.

* * * *

"Person" shall mean an individual, firm, copartnership, association, trust, receiver, corporation or other entity, and shall specifically include the State of Alabama, every county in the State of Alabama, every municipal corporation in the State of Alabama, the United States of America and its agencies, and every public corporation or entity organized under the laws of the United States of America or under the laws of any state of the United States of America, and operating in the State of Alabama, as well as every private or non-public entity.

* * * *

"Utility services" shall mean electricity; domestic water; natural gas, telegraph services; and telephone services to subscribers; provided that 'utility services' shall not mean telephone services or telegraph services stored, used or consumed by a utility regularly engaged in furnishing such services or either of them to the public, or telephone services or telegraph services which are not subject to regulation by the Alabama Public Service Commission or any successor thereto; provided, further, that

'utility services' shall not mean utility services stored, used or consumed by a utility other than by a municipality or other municipal entity organized by a municipality.

* * * *

"Section 4, **Levy of Tax.** There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against every utility in the State of Alabama on account of the furnishing of utility services by said utility, and the amount of said tax shall be determined by the application of rates against gross sales or gross receipts, as the case may be, from the furnishing of utility services in the State of Alabama and shall be computed monthly with respect to each person to whom utility services are furnished, in accordance with the following table:"

In answer to your first question, I am of the opinion that the tax levied by the statute is not imposed upon sewer services furnished by the Utilities Board of the Town of Chatom. It is noted that sewer service is not included within the definition of "utility services" quoted hereinabove.

In answer to your second question, you are advised that the receipts from the sale of water by said Utilities Board in August 1969, will not be subject to the tax imposed by the statute. The statute will become effective on September 1, 1969. See Section 11 of the statute. My conclusion, with reference to said second question, is based upon Section 4 of the statute which is quoted, in part, hereinabove, and upon Sections 7 and 7A, which require the tax imposed to be collected from the purchaser of utility services in the same manner in which the sales tax of the State of Alabama is collected.

In answer to your third and fourth questions, you are advised that the tax levied by the statute must be collected for water furnished to customers residing in the housing project to which your request refers and from individuals who are allowed to recover the cost of extending water lines to their residences or businesses. The tax is levied upon the utility services furnished and the fact that a customer is allowed to recover the cost of extending a water line is not material to the questions presented.

In answer to your fifth question, I am of the opinion that the tax is imposed upon the Utilities Board of the Town of Chatom for water services furnished to said Town. In this connection, see the definition of the term "person" contained in Section 1 of the statute and quoted hereinabove.

The fire hydrant rental contract, mentioned hereinabove provides that the Utilities Board of the Town of Chatom furnish through the fire hydrants such water as the Town may require to be furnished for fire and street purposes in the Town. Such water is "domestic water" as that term is defined in Section 1 of the statute since it is not used or

consumed in industrial processes. Therefore, in answer to your sixth question, I am of the opinion that the statute imposes the tax upon the rental paid by the Town of Chatom to its Utilities Board under the provisions of said contract.

As indicated hereinabove, the term "person" as defined in the statute includes the State of Alabama, its counties and municipalities, as well as public corporations and the United States of America. Therefore, your seventh question is answered in the affirmative with regard to "domestic water" furnished all governments, their departments and agencies.

Yours very truly,

MacDONALD GALLION
Attorney General

July 29, 1969

Honorable Billy J. Duncan, Chairman
Walker County Board of Revenue
Walker County Courthouse
Jasper, Alabama

House Trailers—Registration—Ad Valorem Taxes.

1. Under the expressed provisions of Act No. 159 of the 1962 Special Session of the Legislature (Title 51, Section 704(1), Pocket Part, Code of Alabama 1940, Recompiled 1958), all house trailers, whether used on the highways or not, are subject to registration as is provided therein, with the exception only of house trailers which constitute a part of the stock of a dealer **and house trailers which have been assessed for ad valorem taxation as a part of the realty.**

2. If a house trailer does not constitute a part of the stock of a dealer or has not been assessed by its owner for ad valorem taxation for the tax year involved as a part of the realty, then the owner of the trailer is required to register it as is provided in Act No. 159, supra, and it would not be necessary for the taxing authorities to determine whether or not such trailer is affixed to and has become a part of the real estate or the parcel of land upon which it is located.

3. Where a house trailer is subject to registration under Act No. 159, supra, then under the provisions of Title 51, Section 704(2), Code of Alabama 1940, Recompiled 1958 (see Pocket Part), in addition to the owner being required to register the trailer and pay the three-dollar registration fee under Act No. 159, he is also required to assess same for ad valorem taxes as is provided in Title 51, Section

704, as amended, *supra*, and Title 51, Section 704(2), Code of Alabama 1940, Recompiled 1958 (see Pocket Part), and to pay such taxes as those statutes direct, before a registration tag can be issued for the trailer.

4. Under no circumstances can a house trailer be lawfully assessed as a part of the realty where the owner of the house trailer is not one and the same person as the owner of the real estate or parcel of land on which the house trailer is located.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion dated May 15, 1969, is as follows:

"We are faced with the problem of a large number of mobile homes which are being located in Walker County, Alabama. Many of these mobile homes are transported to a site and the wheels are removed and placed on a permanent foundation. Some of the mobile homes are removed on property owned by the owner of mobile homes and wheels are not removed, but are occupied as a residence.

"We are unable to determine whether those homes which are permanently located are to be assessed as all other homes for ad valorem tax purposes or whether the homes where the wheels have not been removed need a house trailer license in lieu of ad valorem tax?

"Just when does a mobile home cease to be a trailer and become a home?

"We respectfully request that your official opinion of this be rendered to clarify these points."

The question of when a mobile home ceases to be a trailer and becomes a part of the real estate is a question which would depend on the facts in each individual case. This being true, it would be very difficult, if not next to impossible, to give a stereotype answer that would fit each case. It would also entail a lengthy discourse on the law as pertaining to both real and personal property, which might prove to be more confusing than helpful. Moreover, the duty of properly assessing house trailers, like any other property, for ad valorem taxation in the first instance is a duty placed by law on the owner of such trailers. Also, the intent of the owner that such property become a part of the real estate or remain personal property is an important factor to be considered, and one that is often very difficult of proof.

The foregoing then being considered, it appears that you actually are inquiring as to when, or under what circumstances, house trailers are required to be registered as such, and the three-dollar registration fee required to be paid thereon, as is provided in Act No. 159, *supra*.

Your question will then be treated and considered accordingly, particularly, as it is of wide public interest, and one which is often a subject of inquiry.

In reviewing the history of the legislation levying the three-dollar registration or license fee on house trailers, which originated as Act No. 44 of the 1961 Special Session (Acts 1961, Vol. II, page 1897), and which Act was amended, and actually rewritten, in its entirety, as Act No. 159 of the 1962 Special Session (Acts 1962, page 202), I find that the obvious intent of the Legislature in requiring the registration of such trailers and the payment of the three-dollar registration fee was to make it more difficult for the owners of such trailers to avoid assessing them for ad valorem tax purposes and paying the taxes due thereon. The registration of such trailers was obviously thought to be needed because they were often difficult to locate due to their mobility, and because of the tendency of many of the owners to take advantage of the fact that they could be readily moved, and never assessed for ad valorem taxation.

Act No. 44 of the 1961 Special Session, as amended and rewritten as Act No. 159 of the 1962 Special Session, supra, has been incorporated by Michie into the Alabama Code as Recompiled in 1958 as Section 704(1) of Title 51 (see Pocket Part), and will be referred to hereinafter by the section number.

Section 704(1) of Title 51 (Pocket Part, Code of Alabama 1940, Recompiled 1958), supra, in material part provides as follows:

"Every person, firm, or corporation who owns, maintains, or keeps in this state on or after October 1, 1962, a house trailer, except a house trailer which constitutes a part of his stock as a dealer and except a house trailer which has been assessed for ad valorem taxation as a part of the realty, shall pay an annual registration fee of three dollars (\$3.00); and upon payment thereof such owner shall be furnished an identification plate which shall be immediately attached to and at all times thereafter displayed on the back of the trailer for which the registration fee was paid." (Emphasis Supplied)

Section 704(2) of Title 51 (Pocket Part, Code of Alabama 1940, Recompiled 1958), supra, relates to the assessment of house trailers (which are subject to registration) for ad valorem taxation, and provides in pertinent part as follows:

"No identification tag for a house trailer shall be issued until all ad valorem taxes due thereon have been paid. House trailers shall be assessed for ad valorem taxation and taxes thereon paid in the same manner that motor vehicles are assessed and ad valorem taxes thereon paid; and the identification tags shall be evidence of such assessment and payment to the same extent that motor vehicle license tags evidence assessment and payment of taxes on motor vehicles"

It also seems significant in the above respect to note that Section 704(1), supra, also provides that failure to comply with its provisions "shall constitute an offense whether the house trailer is or is not used or operated on the roads or highways of the state."

In view of the legislative background of these statutes and also the very clear and unambiguous language of Section 704(1), supra, it does not appear that the taxing authorities are called upon to resolve for the purpose of collecting this three-dollar registration fee the often very difficult and complex problem as to when a house trailer ceases to be a trailer and becomes a part of the realty. The statute itself provides the answer in this respect by clearly stating that all house trailers are subject to registration, excepting only those house trailers **which constitute a part of the stock of a dealer or those which have been assessed for ad valorem taxation as a part of the realty.**

Insofar as applicable here, if a house trailer has not been assessed as a part of the realty for the tax year involved, it is required to be registered under Title 51, Section 704(1), supra, and ad valorem taxes are due to be paid thereon as is provided under Title 51, Section 704, as amended, and Section 704(2), supra. This would be the case regardless of whether the wheels have been removed from the house trailer or not, if the trailer has not been assessed for the tax year involved by its owner as a part of the realty.

The legislative intent as well as the language of the statute is very clear in this respect and the statute appears to say what it means and not to be open to interpretation. **State vs. Thames, Jackson, Harris Company**, 259 Ala. 471, 66 So. 2d 733, 735, and **State vs. Bay Towing and Dredging Company**, 264 Ala. 187, 85 So. 2d 890. See also Quarterly Report of the Attorney General, Vol. 113, page 67.

It is, however, well to note that under no circumstances can a house trailer be lawfully assessed as a part of the realty where the owner of the house trailer is not also the owner of the real estate or the parcel of land on which the trailer is situated. **Ken Realty Company vs. State**, 247 Ala. 610, 25 So. 2d 675, 678, 166 A.L.R. 58, **State vs. White**, 206 Ala. 575, 90 So. 896, and **State vs. Roden Coal Company**, 197 Ala. 407, 73 So. 5. For a house trailer to be assessed as a part of the realty the ownership of the land and the ownership of the trailer must be in one and the same person. A house trailer located on a trailer park or other parcel of land owned by a person other than the owner of the trailer, cannot be assessed as a part of the real estate. **Ken Realty Company vs. State**, supra, etc.

Yours very truly,

MacDONALD GALLION
Attorney General

July 30, 1969

Honorable Dean H. Byrd, Sr.

Administrator

Southeast Alabama General Hospital

Post Office Box 2007

Dothan, Alabama 36301

Hospital—Nurses—Schools—Colleges and Universities.

1. The Southeast Alabama General Hospital may not under the provisions of applicable statutes make expenditures or contributions to the George C. Wallace Junior College for the purpose of financially assisting in the joint conduct of a formal program of associate degree nursing in order to provide approval training for required professional personnel.

2. The Southeast Alabama General Hospital may not make expenditures for services, material and/or supplies essential to the joint conducting of a school of nursing by its hospital and the George C. Wallace Junior College.

Opinion by Assistant Attorney General Hart.

Dear Sir:

Your request for an opinion of July 17, 1969 is as follows:

"The Houston County Hospital Board incorporated under provisions of Act No. 46 of the Legislature of Alabama (approved June 2, 1949), owns and operates this institution under provisions and subsequent amendments of Act No. 46.

"Provisions of the Act, as recorded in Title 22, Section 204, apparently give clear authorization for us to conduct a nurses' training school. Copies of portions of Title 22, Section 204, to which we refer, are attached hereto as reference. We began preliminary investigational work to determine the practical and economic feasibility of establishing a three year diploma school of nursing several years ago and were immediately convinced that the proposed school was far beyond our financial resources.

"The shortage of trained nurses is an apparent and undisputed fact in most if not every community in our State. Our institution, as well as those in the surrounding area, faces serious operational problems unless an approved program of nurse training is instituted as quickly as possible.

"In recent years our State has, through the State Board of Nursing begun accepting candidates for examination and registry who are graduates of approved two-year Associate Degree training programs which are most frequently conducted through

junior colleges. We have urged our own George C. Wallace Junior College officials to implement such a program with our collaboration and every possible assistance. Junior College officials have responded to our request and are attempting to establish a program in September of this year. It is intended that this institution provide its facilities as the clinical affiliating agency in conducting the total program of training. It is also our desire to make expenditure of our funds to assist in defraying costs involved in conducting the school of nursing even though the school is being conducted under administration of another State agency, the George C. Wallace Junior College.

- “(1) May we the Southeast Alabama General Hospital, under the provisions of applicable statutes, make expenditures to the George C. Wallace Junior College for the purpose of financially assisting in the joint conduct of a formal program of Associate Degree Nursing in order to provide approved training for required professional personnel?
- “(2) May we, the Southeast Alabama General Hospital, make expenditures for services, materials and/or supplies essential to the joint conducting of a school of nursing by this hospital and the George C. Wallace Junior College?

“We respectfully request your opinion on our request at your earliest convenience.”

It is my opinion that both of your inquiries should be answered in the negative. You may not pay from the funds of the Southeast Alabama General Hospital to the George C. Wallace Junior College to assist in the joint conduct of a formal program of associate degree nursing.

It appears that the Southeast Alabama General Hospital's Board of Directors was incorporated under the provisions of Act No. 46, General and Local Acts of Alabama 1949, page 68.

This hospital board is a part of a statewide plan to protect the public health and to provide hospital treatment for those who have heretofore possibly not enjoyed the benefits thereof. **Quarterly Report of the Attorney eneral, Volume 78, page 73.**

This office has ruled that the purpose of Act No. 46, supra, is to provide for an independent agency of the county which will supervise the operation of hospitals and other health facilities of the county. **Quarterly Report of the Attorney General, Volume 66, page 16.**

The term “hospital” is defined by the Act to include the plural as well as the singular, and means public hospitals of all types, public clinics, public health centers and related public health facilities, such as laboratories, out-patient departments, nurses' homes and nurses' training facilities, and central service facilities **operated in connection with public hospitals.**

The Act provides:

"It is the intention of the legislature by the passage of this act to authorize in each of the several counties of the state the organization of a public corporation for the purpose of **acquiring, owning, and operating public hospitals** and other public health facilities in the county in which such corporation shall be organized"

[Emphasis supplied.]

The necessary power to acquire, construct, equip, enlarge, improve, maintain and operate the hospital is given by Section 7 of said Act.

Section 7 of said Act, *supra*, gives the hospital board the authority to construct a nurses' training facility. Upon construction of these facilities, it becomes its further duty to operate and maintain the same. The law does not contemplate, nor does it provide, that the funds of the hospital board can be expended or allotted to any institution or organization over which the hospital board has not direct control or supervision.

Yours very truly,

MacDONALD GALLION
Attorney General

August 6, 1969

Honorable W. W. Elliott, President

Alabama Institute for Deaf and Blind
Talladega, Alabama 35160
Teachers—Alabama Institute for Deaf and Blind.

Teachers employed by the Alabama Institute for Deaf and Blind are not covered by the Alabama Teachers Tenure Law.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion of this office, bearing date of July 24, 1969, is as follows:

"I would like an opinion from you regarding teachers who are employed by the Alabama Institute for Deaf and Blind as to whether or not they are covered under the provisions of the Alabama Teachers Tenure Law as provided in the statutes of the State of Alabama. The Alabama Institute is governed by a Board of Trustees from the congressional districts of the State and has no other regulatory body responsible for its operation.

"If the Alabama Institute for Deaf and Blind is covered by provisions of the Alabama Teachers Tenure Act, what body constitutes the Board as provided in Title 52, Section 359, to act in the cancellation of employment contracts? Is it necessary for this Board to be convened from over the State of Alabama to act on problems involving the Teacher Tenure Act? Can the Executive Committee act as the Board as provided in Title 52, Section 533, of the Alabama Code in implementing the provisions of the Alabama Teacher Tenure Act?"

The Alabama Institute for Deaf and Blind is managed and controlled by a Board of Trustees. Section 520, Title 52, Code of Alabama 1940, Recompiled 1958. This together with other provisions of law relating to the Institute brings it within the reasoning of **Brown v. Folsom**, 268 Ala. 278, 105 So. 2d 666.

In the **Brown** case, the Supreme Court of Alabama said:

"Section 351 of the teacher tenure law, as amended, *supra*, defines the term 'teacher,' as used in said law, to mean and include 'all persons regularly certificated by the teacher certifying authority of the state of Alabama who may be employed as instructors, principals or supervisors in the **public elementary and high schools of the state of Alabama.**' [Emphasis supplied.] It is insisted by appellant that the industrial school comes within the term 'public elementary and high school' as used in the tenure law, and, therefore, her employment as a teacher in said school is subject to said law. If the definition of the term 'teacher,' as contained in §351, as amended, *supra*, were the only provision in the tenure law showing what was intended by the legislature there might be substance to appellant's argument. However, we think the tenure law clearly shows, when all of its provisions are considered together, that it was intended to apply only to teachers employed by a 'board of education' in a 'county or city school system.' Throughout the amendatory act (Act No. 773, *supra*) reference is made to the 'employing board of education.' Nowhere in the act do we find any indication of an intent to make it applicable to the Industrial School for Negro Children, except, perhaps, as argued by appellant, the provision in §351, as amended, *supra*, defining the term 'teacher.' But such provision necessarily must be considered in connection with all the other provisions of the act in ascertaining the legislative intent. When so considered we think it is clear that it was not intended that the tenure law should apply to a teacher employed by the board of trustees of said industrial school. Patently, the industrial school is not a part of a 'county or city school system,' nor is the agency in charge of it a 'board of education.' The act creating the industrial school (Act No. 522, appvd. Sept. 30, 1947, Gen. Acts 1947, p. 373; Code of 1940, Tit. 52, §613(1) et seq., 1955 Cum.

Pocket Part, p. 112) provides that it 'shall be governed and controlled by a board of trustees composed of the governor, the state superintendent of education, the commissioner of public welfare, the state health officer, and seven other trustees who are interested in the proper education and training of delinquent negro children.' Code 1940, Tit. 52, §613(2).

"We perceive no reason why the legislature, if it should choose to do so, could not provide that the tenure law shall be applicable to teachers in said industrial school. The point is that we do not find anything in the present law indicating an intent to make it applicable to such teachers."

It results that the teachers employed by the Alabama Institute for Deaf and Blind are not covered by the Alabama Teachers Tenure Law.

The above ruling renders it unnecessary to answer the remaining questions of your request.

Yours very truly,

MacDONALD GALLION
Attorney General

August 6, 1969

Honorable W. H. Kimbrough
Director, Division of Administration and Finance
Department of Education
State of Alabama
Montgomery, Alabama

County Boards of Education—City Boards of Education
—Schools—Fees—Opinions Overruled.

1. A City Board of Education cannot collect from a student an "attendance fee," "transfer fee," or "non-resident fee."

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of July 2, 1969 is as follows:

"Conflicting opinions have been given by your office concerning the matter of city boards of education charging an attendance fee for children residing out of the city school district who attend school within the city school district.

"On January 16, 1969, Mr. Gordon Madison wrote an opinion to Bankhead, Petree & Savage, Attorneys at Law, 201-206 Bank-

head-Long Building, Jasper, Alabama. In this opinion, he stated that such fee may be charged.

"On March 17, 1969, Mr. Robert P. Bradley wrote an opinion to Dr. Ernest Stone in which he stated that such fee could not be charged.

"We will appreciate it if you will have this question cleared up for us, as the school people of the state are confused about this matter."

It is my opinion that a City Board of Education cannot charge a student with an "attendance fee," "non-resident fee" or a "transfer fee" as a prerequisite to admission.

Only those fees prescribed by law may be charged to and collected from a student by public school officials. See opinion of this office to Honorable Ruben H. King, Commissioner, Department of Pensions and Security, State of Alabama, dated February 26, 1969. And, an "attendance fee," "transfer fee" or "non-resident fee," or whatever name may be given to such a fee imposed because of the non-residency of the student, is not authorized by the present laws of Alabama.

This office recently rendered an opinion to the Honorable Ernest Stone, State Superintendent of Education (opinion dated March 17, 1969), in which it was decided that neither a County Board of Education nor a City Board of Education could charge and collect a non-resident fee.

This opinion is decisive of the question and any opinions of this office, particularly the opinion to Bankhead, Petree and Savage, Attorneys at Law, Jasper, Alabama, under date of January 16, 1969 (Quarterly Report of Attorney General, Vol. 134, page 9), which are in conflict with the opinion to Dr. Stone, dated March 17, 1969, or this opinion, are hereby overruled.

I trust this answers your question, and also eliminates any confusion about this matter that may exist in the minds of the other school officials.

Yours very truly,
MacDONALD GALLION
Attorney General

August 6, 1969

Honorable Dennis Porter
Town Attorney
Town of Chatom
Washington County

Chatom, Alabama 36518

Licenses—Municipalities—Opinions Overruled, Modified
or Distinguished—Public Utilities—Sales Tax—Taxation.

1. The tax imposed by Act No. 21, Acts of Alabama
1969, approved May 14, 1969, is levied upon the gross

receipts derived from the sale of utility services to the State of Alabama, its subdivisions, agencies and public corporations.

2. The tax imposed by Act No. 21, Acts of Alabama 1969, approved May 14, 1969, is not levied upon gross receipts derived from the sale of utility services to the United States of America, its agencies and subdivisions.

3. Quarterly Report of Attorney General, Volume 136, page _____, modified in part.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated July 23, 1969, is as follows:

"Thank you for your opinion of July 23, 1969, in regard to the applicability of the tax imposed by Act No. 21, Acts of Alabama 1969, approved May 14, 1969, to utility services furnished by the Utilities Board of the Town of Chatom.

"We note that you did not mention in said opinion the provisions of Section 5(a) of the statute which excludes from the tax the gross receipts for furnishing utility services which the State of Alabama is prohibited from taxing under the State Constitution and the United States Constitution.

"As pointed out in our original request, the public housing project mentioned therein was constructed with funds granted by the Public Housing Administration, an agency of the United States of America.

"Although not specifically mentioned in our original request, the Utilities Board of the Town of Chatom, of course, furnishes water to the local post office and other agencies of the United States of America which have offices in the Town.

"We doubt that Act No. 21, *supra*, imposes a tax upon water furnished by the Utilities Board of the Town of Chatom to any agency of the United States of America.

"We, therefore, respectfully request that you reconsider question No. 3 and question No. 7 of our original request and extend your opinion by discussing the effect of Section 5(a) of Act No. 21, *supra*, on said questions."

That portion of Sections 5 of Act No. 21, Acts of Alabama 1969, approved May 14, 1969 to which you refer, reads, in part, as follows:

"There are hereby specifically excluded from the gross receipts or gross sales of a utility, upon which the tax herein levied is calculated, all portions thereof derived from the following:

"(a) the furnishing of utility services which the State of Alabama is prohibited from taxing under the Constitution or laws

of the United States of America or the Constitution of the State of Alabama;”

The problem considered in answer to question Number 3 in the opinion rendered to you under date of July 23, 1969, which will be reported in Quarterly Report of Attorney General, Volume 136, concerned the applicability of the tax imposed by Act No. 21, supra, to gross receipts derived from the sale of utility services to the Housing Authority of Washington County. We held that the tax is applicable.

Said Housing Authority was created and is operated under Title 25, Chapter 3, Code of Alabama 1940. It is a public corporation created by Washington County in accordance with the provisions of Chapter 3, supra.

Where there is specific statutory authority therefor a tax may be imposed upon the State of Alabama, its subdivisions, agencies and public corporations. See Quarterly Reports of Attorney General, Volume 107, page 7, Volume 122, page 11, and Volume 124, page 23.

It is not here material that the housing project operated by said Housing Authority was constructed with funds granted by or borrowed from the Public Housing Administration, an agency of the United States of America. Therefore, the conclusion stated in answer to said question Number 3 is sound and should be followed.

In answer to question Number 7 in the opinion of July 23, 1969, supra, we considered the problem of whether the tax imposed by Act No. 21, supra, is applicable to gross receipts derived from the sale of utility services to the United States of America, its subdivisions and agencies as well as other governments and public entities and held the tax to be applicable.

As pointed out in said opinion, the United States of America is included within the definition of the term “person” in Section 1 of Act No. 21, supra. However, that portion of Section 5 of said statute, which is quoted hereinabove, has the effect of excluding from the tax here considered the gross receipts derived from the sale of utility services to the United States of America, its agencies or subdivisions.

Therefore, you are advised that the tax imposed by Act No. 21, supra, must be collected by the Utilities Board of the Town of Chatom for water furnished the residences located in the housing project operated by the Housing Authority of Washington County. You are further advised that said tax is not levied under the statute here considered upon water furnished by said Utilities Board to the United States Post Office and other Federal subdivisions or agencies served by said Utilities Board.

The opinion of July 23, 1969, supra, is hereby modified to conform to the opinion expressed herein. Except as to modified, the conclusions reached in said prior opinion are expressly reaffirmed.

Yours very truly,
MacDONALD GALLION
Attorney General

August 11, 1969

Honorable James L. North
Bradley, Arant, Rose & White
1500 Brown-Marx Building
Birmingham, Alabama 35203

Auburn University—Bonds for construction of Montgomery Branch: Use of proceeds of sale.

Change in location of buildings authorized by Legislature after sale of bonds will not support suit by bondholders or taxpayer to void such usage. Such change in location is not a material deviation from purpose of sale and in no manner impairs bondholders' security as repayment not dependent on revenue from the facility to be constructed. Act No. 403, 1967 Regular Session; Act No. 160, 1969 Regular Session.

Opinion by Assistant Attorney General Lurie.

Dear Sir:

Your request for an official opinion bearing date July 25, 1969 is as follows:

"Act No. 403 adopted at the 1967 Regular Session of the Legislature of Alabama authorized the Alabama Public School and College Authority ('the Authority') to issue and sell \$5,000,000 principal amount of its bonds ('the bonds') and to pay the net proceeds from the said sale to Auburn University ('the University') to be used by the Board of Trustees thereof for construction and equipment of a branch of the University in the City of Montgomery. The bonds are obligations of the Authority and are in no way dependent on revenues from the facilities to be constructed. The bonds have been issued and sold but the Board of Trustees of the University has not authorized construction to begin because the site selected for the new branch is not within the corporate limits of the City of Montgomery, although within its police jurisdiction. Act No. 403 was amended by the Alabama Legislature during 1969 so as to permit the trustees of the University to construct the new branch of the University outside the limits of the City of Montgomery but within the police jurisdiction.

"Our client requests an Attorney General's opinion respecting the following question:

"May the Board of Trustees of Auburn University use the proceeds from the sale of the bonds authorized by the said Act No. 403 to construct and equip a four-year college or branch of the University outside the city limits of Montgomery but within its police jurisdiction?"

The answer to your question is in the affirmative.

The general rule that the proceeds of the sale of bonds must be applied to the purposes for which the bonds were issued and sold and that such funds may not be validly diverted to any other purposes or uses is well established. **Wood v. Birmingham**, 276 Ala. 544, 165 So. 2d 95 (1964), and numerous other cases. This general rule is apparently subject to the qualification that the issuing authority may make minor changes in the details of the plans of the proposed improvement. **Board of Revenue of Etowah County v. Hutchins**, 250 Ala. 173, 33 So. 2d 737 (1948); **Traeger v. Carleton**, 64 N.W. 2d 776 (1954); **Hayes v. Seattle**, 207 Pac. 607 (1922). There is also some indication that a bondholder cannot maintain an action even for a substantial change in the proposed improvement without showing that he will be injured by the change. **Hayes v. Seattle**, *supra*.

In order to apply the general rule and its qualifications to the fact situation under consideration, it must first be determined what the purpose was for which the bonds were issued and sold, whether there has been a deviation from that purpose, and if so, whether the deviation is material and whether the bondholder is injured as a result of the deviation. There is little authority on the question of whether a change in the location of a proposed improvement constitutes a material deviation of which a bond holder may complain. If the bond is to be paid out of revenue from the proposed improvement, it is evident that changing the location of the improvement might impair the bondholders' security and therefore could be enjoined by a bondholder. However, cases involving revenue bonds are not in point, because the bonds issued by the Alabama Public School and College Authority do not depend on revenue from the new branch of the University for payment.

The case which is most similar to the Auburn situation and from which the best analogous arguments can be drawn is **Board of Revenue of Etowah County v. Hutchins**, 250 Ala. 173, 33 So. 2d 737 (1948). The Board of Revenue of Etowah County submitted to the electors of said county a proposal that bonds be issued and the proceeds used to construct a new courthouse. In the call for the election and on the official ballot it was stated that the new courthouse would be constructed on the site of the courthouse then in existence. Later the Board of Revenue decided that the old site was inappropriate and that the new courthouse should be constructed on a different location within the duly constituted limits of the county seat. This situation seems to be roughly analogous to that in which the Trustees of Auburn University find themselves after the passage by the Alabama Legislature of the amendment allowing them to build the Auburn University branch within the police jurisdiction of Montgomery. In the Etowah County case a second election was held to ask the voters to approve the new site, but the court makes it clear that its decision would have been the same had there been no second election. The court noted that the law requires that the purpose for which the election is held and the purpose for which the bonds are issued to be stated in the notice of election and that the use of the proceeds of the sale should be limited to that purpose. "When, however, the notice stated that the purpose of the election and of the bond issue

was for the erection of a 'new building for use by said county as the courthouse and jail' this legal requirement was satisfied. We cannot regard that the superfluous mentioning in the notice of the place where the structure was to be erected is of any controlling significance. As stated, the location of the site of the plant was within irreversible discretion of the board of revenue and no election could dictate otherwise and no court, save for fraud, corruption, or unfair dealings, could intervene to supplant the board's action . . . A supercritical view toward compliance with the pertinent constitutional and statutory directions noted above will not be exacted. Substantial compliance is all that is required and a fair interpretation of action under the several provisions of law must be accorded so that the substance be not subordinated to the shibboleth of technicality and 'the end to the means' . . . We perceive no more legal impediment in the way of this action of the board than had the election proceedings recited that the building was to be of brick and it should have later developed that the only expedient material to be used should be stone; or had the election been for the construction of a sanitary sewer and the election proceedings had noticed that the sewer was to be on the south side of the street, whereas it should later develop that the expedient place for constructing the sewer should be on the north side of the street. Certainly it could not be successfully argued that the board of revenue, acting in good faith, would be bound by such recitals in the election proceedings."

The case of **Wood v. Birmingham**, *supra*, although not in point, does indicate that the Alabama courts take a fairly broad view of what constitutes the purpose for which the bonds were issued. Bonds were issued and the proceeds were to be used for the purpose of improving highways of the City of Birmingham. The court held that this contemplated improvement of not only existing streets but new streets and relocation of streets to provide for future needs and growth of the city and, therefore, a proposed expressway could be built with the proceeds of the bond issue, there being no deviation from the purpose for which the bond proceeds were to be used.

In **Upchurch v. Raleigh**, 114 S.E. 2d 772 (1960) a taxpayer brought an action to restrain the city from applying and using proceeds from a bond issue to construct water and sewer lines in an area which the city proposed to annex. The court held that the proceeds of the water and sewer bonds for construction of water and sewer lines could be expended within areas annexed to the city after the date of the election though neither the bond ordinances nor the ballots used in the election disclosed intent on the part of the municipality to so use such proceeds.

Davis v. Seattle, 355 P. 2d 360, involved a bond issue for the purpose of buying land and building a civic center. After the bond issue had been approved and the land acquired, it was discovered that the remaining funds were insufficient to complete the project as planned. The voters were then asked to approve revised spending plans, which they did. When a taxpayer sued, the court held that any deviation from the original plans was rendered moot by the voters approval of the revised

plans. The argument can be made that if the voters can approve spending bond proceeds for a purpose other than the one they authorized when they voted for the bond issue, the Legislature should be able to authorize a change in the disposition of proceeds of bonds which it had been authorized to be issued and sold.

There is some authority indicating that diversion of the proceeds of a bond sale may be authorized by the Legislature unless such action is prohibited by the State Constitution. McQuillin, *Municipal Corporations*, Section 43.68 and cases cited in footnote 56. In **Sambor v. Kadley**, 140 Atl. 347, a Pennsylvania court held that proceeds of a municipal bond issue could be transferred for use in a sesquicentennial celebration under a statute authorizing the transfer if the purpose to which the funds were transferred would have been lawful when the bonds were originally authorized.

Another case involving the transfer of bond proceeds from one project to another is **Cabe v. Sisk**, 116 S. E. 419. Bonds had been sold for the purpose of constructing a municipal building, but the proceeds were insufficient and it would have been extravagant to appropriate enough money to construct the building. The North Carolina Legislature then passed an act allowing the bond funds to be diverted to other projects and the funds were used to improve waterworks facilities. The court upheld this diversion against a challenge by a taxpayer and commented that the bondholders had no interest because the legislative action had no effect on the validity of the bonds. The act was held to be "a valid statute authorizing diversion and no reason occurs to us why it should not be upheld."

With regard to the question of whether legislative action authorizing the diversion of bond proceeds would be an unconstitutional impairment of a contractual obligation, McQuillin, *Municipal Corporations*, Section 19.43 (with reference to city actions) says, "No impairment of the obligation of a contract results from an ordinance that affects the contract but does not materially destroy, diminish or affect any right thereunder." The case of **Hard v. Baker**, 228 Ala. 517, 154 So. 77 (1934), while dealing with an entirely different subject, indicates the attitude of the Alabama Supreme Court toward what constitutes an impairment of a contractual obligation. The court quotes from **Newton v. Board of County Commissioner of Mahoning County**, 100 U.S. 548, 25 L. Ed. 710, "The contractual clause of the federal and state constitutions has no application to obligations on the part of the state as to the location, conduct, or management of its own institutions." In **Sweet v. Wilkinson**, 252 Ala. 343, 40 So. 2d 427, the court again quotes this same passage and reaffirms the doctrine that the contract clauses of the state and federal constitutions have no application to obligations on the part of the state as to the location, conduct or management of its own institutions.

If Auburn University is one of the State's own institutions as the term is used in the above cases, it would seem that the location of said institution is a matter within absolute discretion of the Alabama Legislature and that even if there is a contract between the bondholders and

the Alabama Public School and College Authority or the Trustees of Auburn University regarding the location of the Montgomery branch of Auburn University, the Alabama Legislature may change the location of the Auburn University branch without violating the prohibition against impairment of contracts.

To reach any different conclusion would deprive the Alabama Legislature of the right and power to enact laws in the manner provided by the Constitution and laws of this State.

Yours very truly,
MacDONALD GALLION
Attorney General

August 26, 1969

Honorable Ruben K. King, Commissioner
State Department of Pensions and Security
Administrative Building
64 North Union Street
Montgomery, Alabama 36104

Volunteers—Pensions and Security Department.

1. The Department of Pensions and Security has authority to use the services of nonpaid and partially paid volunteers.
2. The Department of Pensions and Security has authority to compensate partially paid volunteers for expenses incurred in the giving of services.

Opinion by Assistant Attorney General McLendon.

Dear Mr. King:

Your request for a formal opinion is as follows:

“New Federal regulations require this Department to use nonpaid and partially paid volunteers in this Department’s programs. These new requirements can be found in: Volume 34, Number 18, Parts I and II, Federal Register, dated Tuesday, January 28, 1969, at pages 1320 and 1355, and in Volume 34, Number 19, of the Federal Register, dated Wednesday, January 29, 1969, at pages 1389, 1392, and 1393.

“In order to meet these Federal requirements, can this Department use nonpaid and partially paid volunteers and can this Department legally pay such partially paid volunteers? We specifically call your attention to the definitions of ‘Volunteer’ and ‘Partially paid volunteers’ appearing in Volume 34, Number 18, Section 225.1, Subsections (c) and (d), as follows: ‘(c) The term “Volunteer” describes a person who contributes his personal service to the community through the agency’s human

services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.' '(d) "Partially paid volunteers" means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.'"

It is my opinion that the Department of Pensions and Security of the State of Alabama can legally use nonpaid and partially paid volunteers and has legal authority to compensate such partially paid volunteers for expenses incurred by them.

The Federal Social Security Act, as amended (42 U.S.C.A., Sections 302, 602, 705, 1203, 1352, 1382, 1396a [1969 Pocket Part]), provides that State plans for the various public assistance categories must provide for the use of nonpaid or partially paid volunteers in social service volunteer programs. Said Act, as amended (42 U.S.C.A., Section 1302), also provides that the Secretary of Health, Education, and Welfare shall make and publish necessary rules and regulations. For Federal rules and regulations with reference to use of nonpaid and partially paid volunteers in the State public assistance programs, see The Federal Register, Volume 34, Numbers 18 and 19 (January 28 and 29, 1969), at pages 1319 - 1320, 1354 - 1356, and 1387 - 1393. See, also, "Federal Inter-agency Day Care Requirements," dated September 23, 1968, at pages 5 - 7 and 13 - 15.

Title 49, Code of Alabama 1940, Recompiled 1958, provides, in pertinent part, with reference to the Department of Pensions and Security, as follows:

"§17(5) . . . The state board, in conference with the commissioner, shall be responsible for the adoption of policies, rules and regulations . . . ; all administrative and executive duties and responsibilities of the state department shall be performed by the commissioner"

"§17(6) . . . standards shall in no case contravene the Social Security Act and the rules and regulations promulgated thereunder"[Emphasis added.]

"§17(7) . . . it shall be the duty and responsibility of the state department to: . . . (5) Act as the agent of the federal government in welfare matters of mutual concern, and in the administration of any federal funds granted to the state to aid in the furtherance of any of the functions of the state department, and be empowered to meet such federal standards as may be established for the administration of such funds"[Emphasis added.]

It would seem clear from the portions of the Federal Social Security Act and federal rules and regulations and State statutes cited hereinabove that it is legal for the Department of Pensions and Security

to use non-paid or partially paid volunteers, and, further, that said Department has legal authority to compensate partially paid volunteers for reasonable expenses incurred by them in rendering volunteer services.

The office of the Attorney General in all questions posed by your Department to our office has given broad interpretation to statutory authority. It has been ruled that your Department does have the authority to meet Federal standards which may be established for the administration of State and Federal funds (See Quarterly Report of Attorney General, Volume 131, page 24; Quarterly Report of Attorney General, Volume 129, page 18; Quarterly Report of Attorney General, Volume 111, page 55; and Quarterly Report of Attorney General, Volume 60, page 147).

Yours very truly,
MacDONALD GALLION
Attorney General

September 3, 1969

Honorable W. Cooper Green, President
Commission of Jefferson County
211 Court House
Birmingham, Alabama 35203

Officers and Offices—Counties—Jefferson County.

A county has no authority to pay actual and necessary expenses for travel and subsistence for certain officers of Jefferson County for attending conventions, conferences, seminars, symposiums, etc. These officers in question are the Judges of the County Family Court, Judges of the Criminal Court, Court Reporter of the Criminal Division, and Member of the Board of Equalization.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of July 28, 1969, is as follows:

"We desire and hereby request a formal and definitive opinion from your office whether Jefferson County can legally pay from its general fund the expenses of various county officials in attending seminars or conventions, specifically:

"1. Can Jefferson County, by resolution, pay the actual and necessary expenses for travel and subsistence for the Judge of the Jefferson County Family Court to attend the Annual Convention of the National Council of Juvenile Court Judges? The office of the Judge of this court was created by Act No. 674

of the 1967 Session of the Legislature (1967 General Acts, Vol. II, Page 1499). The name of the Juvenile and Domestic Relations Court was changed to the Family Court of Jefferson County. The Act provided that the jurisdiction and function of the Juvenile Court were to continue under the new name and judgeship. The statutes relating to the Juvenile and Domestic Relations Court of Jefferson County (now the Family Court) are codified in Title 62, Sections 290-309 of the 1958 Recompiled Code of Alabama.

"2. Can Jefferson County, by resolution, pay the actual and necessary expenses for travel and subsistence for the Judge of the Criminal Court of Jefferson County to attend the Annual Traffic Court Seminar where the Judge of said court has been requested to deliver a paper as a part of the Seminar? The Jefferson County Criminal Court was created by Act No. 95 of the 1965 Regular Session of the Legislature (1965 General Acts, Vol. 1, Page 120). An additional Judge was provided for said court by Act No. 340 of the 1967 Session of the Legislature (1967 General Acts, Vol. II, Page 885).

"3. Can Jefferson County, by resolution, pay the actual and necessary expenses for travel and subsistence for the three (3) members of the Jefferson County Board of Equalization to attend the Annual Conference of the International Association of Assessing Officials in Denver, Colorado? The administrative expenses of the County Board of Equalization are paid one-third by the State, one-third by the County and one-third by the City of Birmingham under Chapter 9, Title 51 of the 1958 Recompiled Code of Alabama?

"4. Can Jefferson County, by resolution, pay the actual and necessary expenses for travel and subsistence for the official Court Reporter of the Criminal Division of the Tenth Judicial Circuit of Alabama to attend the National Convention of National Shorthand Reporters Association in Boston, Massachusetts?

"With respect to Paragraph (1) above, we have your opinion dated May 28, 1969, addressed to Honorable A. W. Steineker, Jr., Chief Examiner, Department of Examiners of Public Accounts, a copy of which is attached for your ready reference. At our request, we have also been furnished a copy of your letter dated June 25, 1958, addressed to Honorable Jack Caperton, Board of Revenue of Jackson County, and we have been referred to Quarterly Reports of the Attorney General, Vol. 41, Page 46 and Vol. 52, Page 84.

"In view of the questions involved, we need and would appreciate your prompt and official opinion with respect to the four circumstances above related."

In my opinion each of the four inquiries presented by you should be answered in the negative.

In a letter of this office to Honorable James E. Moore, Attorney, Mobile County, dated January 10, 1964, it was held that a Judge of the Circuit Court could not be paid his expenses by the county for attending the National College of State Trial Judges. In said opinion it was observed:

"This office has consistently held that a county cannot pay out of its general fund the expenses of the various county officers for attending conventions of such officers where instructions are given pertaining to the functions and duties thereof, except in the case of members of the county governing body where such expenses could be paid out of the county road and bridge fund as the same may pertain to road and bridge duties. — Biennial Report of Attorney General, 1934-36, page 160; Quarterly Report of Attorney General, Volume 31, page 54; Quarterly Report of Attorney General, Volume 41, page 46; letters to: Honorable Leroy Stevens, Chairman of the Board of Revenue and Road Commissioners, Mobile County, dated June 20, 1955; Honorable David M. Cochran, Judge of Probate, Tuscaloosa County, dated June 7, 1960; Honorable M. R. Joiner, Register, Talladega County, dated June 6, 1961; Honorable J. H. Curry, County Attorney, Pickens County, dated July 26, 1962."

In letters of this office to Honorable David M. Cochran, Judge of Probate, Tuscaloosa County, dated June 7, 1960; and to Honorable William W. Rayburn, Judge, County Court of Etowah County, dated May 10, 1960, it was held that the county could not pay the expenses of Judges of Juvenile Courts for attending the National Conference of Juvenile Court Judges. In a most recent letter to Honorable A. W. Steineker, Jr., Chief Examiner, Department of Examiners of Public Accounts, dated May 28, 1969, which requested a review of these two opinions, the same were reaffirmed. In said letter it was stated:

"After such review and careful consideration of the opinions in question, I am constrained to the conclusion that said opinions are correct, and hereby adhere to the same."

Your inquiries numbered 1 and 2 are specifically answered in the negative by the above. In my judgment it matters not whether the meetings are called conferences, conventions, seminars, symposiums, or the like.

Your inquiries numbered 3 and 4, in my opinion, should also be answered in the negative based on the principles enunciated in the authorities above set forth.

I find nothing contained in the specific acts mentioned in your letter of inquiry pertaining to Jefferson County which would alter the conclusions here reached. I am constrained to the view that negative answers are correct in view of the former rulings of this office.

Any former opinions or expressions of this office holding contrary to the above are hereby overruled or modified by this opinion.

Yours very truly,
MacDONALD GALLION
Attorney General

September 4, 1969

Honorable Murray W. Beasley
Attorney at Law
Tompkins Building
Tuscumbia, Alabama 35674

Taxation—Compensation—County Boards of Equalization.

Compensation of members of the several county Boards of Equalization is on a basis of total assessed value of all taxable property in the county, using the year 1955 as the basis.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Beasley:

Your request for an official opinion dated August 20, 1969, is as follows:

"The Colbert County Board of Equalization has asked me to write you for an official opinion as to the interpretation of Title 51, Section 94, 1940 Code of Alabama, as amended, Recompiled 1958.

"I gave them my opinion that even though the value of property in Colbert County had been increased considerably since 1955 that they would still be paid accordingly to the total assessed value of all taxable property, using the year 1955 as the basis for their compensation.

"Their question to you is even though the total assessed value of taxable property has increased from over \$30 million to over \$80 million from 1955 to 1969, would they automatically have their compensation increased as provided in Title 51, Section 94, 1940 Code of Alabama, as amended, Recompiled 1958?"

Act No. 217, First Special Session 1964, page 299, at page 301 (Title 51, Section 94, as amended, pocket parts, Code of Alabama 1940, Recompiled 1958) provides, in part, as follows:

"Section 94. Term of Service and Compensation of Members of the Board. The annual terms of service and compensation of members of the several county boards of equalization shall be on a basis of total assessed value of all taxable property, **using the year 1955** as the basis, to be determined as follows: . . . " (Emphasis supplied.)

The rest of the provisions of Section 94 fixes the compensation based on the total assessed value of all taxable property in the various counties according to the Tax Assessor's abstract of assessment "for said year."

The above provision of law is clear and unambiguous. The basis for compensation of the members of the several county Boards of Equalization is in relation to the total assessed value of all taxable property in the county using the year 1955 as the basis. Section 94, *supra*, was amended in 1964 by Act No. 217, *supra*, and had the Legislature intended to do so, a later year could have been substituted for the year 1955. As a matter of fact, H. B. 1354, now pending in the current session of the Legislature, further amends Section 94 by changing the year 1955 to 1969. As of this date, H. B. 1354 has not become law.

Yours very truly,
MacDONALD GALLION
Attorney General

September 4, 1969

Honorable Ruben K. King, Commissioner
State Department of Pensions and Security
Administrative Building
Montgomery, Alabama 36104

Pensions and Security, Department of—Blind Persons.

The State Department of Pensions and Security is authorized to limit public assistance payments to the blind to the maximum amount matchable by the Federal government.

Opinion by Assistant Attorney General Stapp.

Dear Mr. King:

Your request for a formal opinion is as follows:

"Act No. 262, Acts of Alabama, Special Session 1966, page 405, amended an earlier act providing for further assistance to blind persons, and provided as follows:

"Section 3. Any applicant who qualifies under the provisions of this Act shall be entitled to an amount of assistance which, when added to the income of the applicant from all other sources, equals a minimum of Seventy Dollars (\$70.00) per month. Amounts of income and resources shall be exempted as may be authorized by Federal law or regulations. In any case where it is found that the needs of an applicant exceed the minimum provided by this section, an additional amount of assistance shall be paid."

"At the time Alabama's basic Public Welfare Act was enacted, the Alabama Legislature restricted the use of State funds as follows:

"Within maximum matchable payments in which the federal government will participate as prescribed in the Federal Social Security Act, the amount of assistance to which any person described in section 17(14) shall be entitled shall, under the rules and regulations of the state department, be determined upon the basis of the amount of total income and resources received by such person, except as provided in section 17(14), and such other conditions existing in each case as will determine the need for assistance for such person as provided in this chapter. The amount of such assistance shall be determined with due regard to the conditions existing in each case, subject to the funds available, and the rules and regulations and standards of the state department and the provisions of this chapter.' Act No. 703, Acts of Alabama 1951, Section 14 (Title 49, Section 17(15), Code of Alabama 1940, as amended).

"At the present time an average payment of \$75.00 per month is the maximum matchable payment in which the Federal government will participate in the blind category. According to caseload data compiled by our Bureau of Research and Statistics, it appears as though we are almost at the average payment of \$75.00 in the blind category. In the event that the average payment should exceed the \$75.00, the remainder of the amount payable for each recipient over \$75.00 will have to be paid for with State funds. Our problem is whether Act No. 262, *supra*, or its predecessor repeals or amends the requirement that our public assistance payments be made in conformity with the maximum matchable allowance of the Federal government with respect to the blind. At the time Act No. 262, *supra*, and Act No. 574, Regular Session 1963, Volume 2, page 1195, were passed, no additional State funds were appropriated or authorized to be appropriated to cover the eventuality that a higher average payment would be supplemented with State funds.

"I would, therefore, appreciate your formal opinion advising me what my authority is with respect to limiting the amount of the payment to the blind to the average maximum amount matchable to the blind by the Federal government."

You have asked me about your authority to limit public assistance payments to the blind to the maximum amount matchable by the Federal government in the light of Act No. 262, Acts of Alabama, Special Session 1966, page 405. You point out that the average maximum payment in which the Federal government will participate is \$75.00. Act No. 262, *supra*, does require that assistance when added to the income of the applicant from all other sources is to equal a minimum of \$70.00 per month. As long as the individual recipient receives this and as long as your Department exempts the income and resources required by State and Federal law without exceeding the Federal maximum matchable, it would appear that you are authorized to adjust your budgetary procedures and regulations to effectuate the most favorable

matching arrangement. In other words, you may limit the payment in accordance with the maximum matchable payment participated in by the Federal government.

The provisions of Act No. 262, *supra*, do require a payment in instances where the needs of the applicants exceed the minimum payment authorized by Act No. 262, *supra*. However, there is no requirement that this payment be a certain amount, nor is there any language in Act No. 262, *supra*, or in Act No. 574, Regular Session 1963, Volume 2, page 1195, which requires your Department to make any payment in excess of the maximum amount participated in by the Federal government. In view of the fact that no State funds were appropriated to effectuate a higher payment than the payment which can be made with a favorable Federal matching payment, it would appear that you are clearly authorized to set your standards and budgeting procedures in accordance with the provisions of Title 49, Section 17(15), Code of Alabama 1940, as amended. Act No. 262, *supra*, did not amend or repeal the requirement that funds be expended on the basis of the maximum matchable by the Federal government. Therefore, it is my opinion that you are authorized to limit public assistance payments to the blind to the maximum amount matchable by the Federal government.

Yours very truly,

MacDONALD GALLION
Attorney General

September 10, 1969

Honorable Hoyt Elliott

Attorney

Water Works and Gas Board

City of Cordova

Walker County

Cordova, Alabama 35550

Compensation — Expenses — Municipalities — Public Utilities — Water.

1. A municipal utilities board operating under Title 37, Chapter 7, Article 5, Code of Alabama 1940, Recompiled 1958, may pay its board of directors fees not to exceed the amounts prescribed by Act No. 113, Acts of Alabama 1956, page 439.

2. A municipal utilities board which amends its certificate of incorporation so as to operate under Title 37, Chapter 7, Article 7, Code of Alabama 1940, Recompiled 1958, may pay fees to its board of directors not to exceed the amounts prescribed by Act No. 701, Acts of Alabama 1961, page 993.

3. The members of a municipal utilities board may be reimbursed for actual expenses incurred in the performance of their duties.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 28, 1969, reads as follows:

"I represent the Water Works and Gas Board of the City of Cordova. This Board was incorporated under the provisions of Title 37, Section 394 Alabama Code of 1940, Recompiled 1958. "After the Board's incorporation many years ago, it operated only a water system in the City of Cordova. By subsequent amendment to the Corporate Charter, it has become authorized to operate a gas system, which it has now done for years. A new sewer system is being installed in the City of Cordova and another amendment to the Corporate Charter will soon be made, under the provisions of Chapter 7, Article 7, Code, to authorize this same Board, which originally operated only the water system to operate the sewer system. After the next amendment is made, the Board will then be operating a water system, a gas system and a sewer system. The Board has requested me to write your Office for an opinion as to whether or not Title 37, Section 402(17) providing for the payment of fees for the Directors of this Board, means that a fee of \$15.00 for the Chairman and \$10.00 for each of the Board members might be paid for each of the systems, that is, water, gas and after it commences to operate this sewer system, then also sewer operated by the Board. I will appreciate a ruling from your Office on this question.

"The Board has also directed me to request an opinion from your Office as to whether or not the provisions of Act No. 127 (House Bill No. 123, Shumate and Dobbs) which became effective May 14, 1969, providing in substance that members of the Board of Directors of such Boards as the Water Works and Gas Board of the City of Cordova who are also members of the municipal governing body may be paid an allowance for 'expenses in connection with their duties,' means that the members of the Board of Directors of such Boards who are also members of the municipal governing body are entitled to payment of the fees for Directors which are authorized at Title 37, Section 397. In other words, said Act No. 127 provides for the payment of an allowance for 'expenses in connection with his duties' at the same time and in the same manner that expense allowances are paid to members of such Boards of Directors who are not members of the municipal governing body. My client would like to pay the members of the Water and Gas Board who are also members of the municipal governing

body the same Directors' fees that are authorized at Title 37, Section 397, and I would appreciate a ruling from your Office at your earliest convenience on this question."

Under the facts stated, the Board to which your request refers was created under the statutes now codified as Title 37, Chapter 7, Article 5, Code of Alabama 1940, Recompiled 1958. Thereafter, said board operated, in addition to its water system, a gas system under the authority of Article 6 of Chapter 7, *supra*. The proposed amendment to the certificate of incorporation will be made pursuant to Title 37, Section 402(16), Code of Alabama 1940, as amended by Act No. 754, Acts of Alabama 1967, page 1607. After said amendment, the board will then operate under the provisions of Article 7 of Chapter 7, *supra*.

Prior to the proposed amendment to its certificate of incorporation, the Board of Directors of the Water Works and Gas Board of the City of Cordova may be paid, at the discretion of said Board, fees not to exceed \$15.00 per month for the Chairman and \$10.00 per month for each of the other members. See Title 37, Section 397, Code of Alabama 1940, as amended by Act No. 113, Acts of Alabama 1956, page 439.

After said certificate of incorporation is amended, as proposed, the maximum fees which may be paid to each director will be controlled by Title 37, Section 402(17), Code of Alabama 1940, as amended by Act No. 701, Acts of Alabama 1961, page 993. Under the provisions of this statute, the maximum amount of such fees is controlled by the number and type of utility systems operated by the board. Said statute provides that where a board which is organized by a municipality having less than 5,000 inhabitants, according to the last or any subsequent official census, operates multiple utility systems, the maximum fee which may be paid its chairman shall not exceed \$25.00 per month and the maximum fee which may be paid the other directors shall not exceed \$20.00 per month.

According to the 1960 Federal Decennial Census, the City of Cordova has a population of 3,184.

Therefore, I am of the opinion that after the Board to which your request refers amends its certificate of incorporation so as to operate under Article 7, *supra*, the Board of Directors may pay its Chairman a fee not to exceed \$25.00 per month and may pay the other members of the Board of Directors fees not to exceed \$20.00 per month each.

The statutes cited hereinabove, which control the compensation of the members of the Board to which your request refers and which will control such compensation after the amendment to the certificate of incorporation of said Board, provide that all members of the Board of Directors shall be reimbursed for actual expenses incurred in the performance of their duties. These statutes also provide that a member of the board of directors who is also an officer of the municipality may not be paid a fee for his services.

Section 1 of Act No. 127, Acts of Alabama 1969, approved May 14, 1969, which is applicable to municipalities in Walker County, reads as follows:

"Any provision of law to the contrary notwithstanding a member of the board of directors of an incorporated municipal waterworks, gas or other public utility board, who is also a member of the municipal governing body of a municipality in counties having populations of not less than 51,000 nor more than 56,000 according to the most recent federal decennial census, shall be entitled to receive the same allowance for expenses in connection with his duties as a member of such board of directors of the corporation as other members of the board. The allowance shall be paid at the same time and in the same manner that expense allowances are paid to members of the board of directors who are not members of the municipal governing body."

Since Act No. 127, *supra*, refers only to "expense allowances" and not to director's fees, I am of the opinion that the Board to which your request refers may not pay a fee to a municipal officer who is also a member of said Board, but may only reimburse such municipal officer for actual expenses incurred by him in the performance of his duties as a member of such Board.

Yours very truly,
MacDONALD GALLION
Attorney General

September 12, 1969

Honorable Charles H. Younger
City Attorney
City of Huntsville
Madison County
Huntsville, Alabama

Bids—Contracts—Municipalities.

Under the facts presented, a municipality may contract for the use and operation of a sanitary landfill on a negotiated basis.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an opinion dated August 23, 1969, is as follows:

"The City of Huntsville, with City-owned equipment and City employees, has heretofore maintained within the City of Huntsville, upon land owned by the City, a sanitary landfill for the disposal of garbage, trash, and like substances. In addition, the

City has operated a garbage and refuse disposal system, for which fees are fixed by ordinance. A copy of Ordinance No. 68-69, which establishes said system, as adopted and approved on the 7th day of February, 1968, is attached hereto as exhibit 1.

"The present sanitary landfill has almost reached its capacity, and the City is considering further provisions for the disposal of such material within the City. Capital outlay will apparently amount to several hundred thousand dollars if the City is to acquire land and purchase replacements for equipment which now needs to be replaced. The City Limits covers more than 112 square miles of land area. The City operates both packer bed and open bed trucks, all of which deposit all collected material directly at the landfill area. Haul distances and surrounding land uses are material considerations. The present City sanitary landfill is reasonably well isolated from incompatible land uses and is conveniently located in relation to haul distances from most areas of the City. Excluding land cost, the City is now spending an estimated \$128,000.00 annually to operate the City sanitary landfill.

"A private firm has proposed to provide approximately 70 acres of land in the general vicinity of the present City sanitary landfill, to accept all of the refuse, garbage, trash, and rubbish from the City of Huntsville collection system at an annual cost to the City of \$72,000.00, and to charge others a uniform dump fee for said services, with the maximum rates therefor being initially fixed by the franchise ordinance, and thereafter specifically subject to amendment by the City Council.

"In considering the above proposal, one of the City's prime considerations is the skill and experience of the firm's president in the design, operation, and supervision of a sanitary landfill. The firm's proposal includes an agreement to continuously maintain his services, or the services of some other person approved by the City, experienced in the engineering, planning, and management of a sanitary landfill, else the agreement is to become void.

"The private firm's proposal has been put in the form of an ordinance or franchise agreement, a copy of which is attached hereto, marked exhibit 2.

"Premises considered, I respectfully request your official opinion as to whether or not the proposed ordinance would be subject to the Competitive Bid Law, Act No. 217, S. 23, approved May 10, 1967, or whether or not the same would be exempt under Section 2 of said act."

Public Health Service Publication No. 1792, issued in 1968 by the Department of Health, Education and Welfare of the United States of America, reads, in part, as follows:

"Engineering knowledge and experience in sanitary landfill site selection, design, and operation are essential requirements of the individual or agency chosen to develop the sanitary landfill. If the planning or operating agency does not have this engineering experience and competence, every effort should be made to obtain the services of the best engineering consultant available. Although a sanitary landfill is considered the most inexpensive of the approved methods of disposal, it is a mistake to assume that a successful operation requires little skill or knowledge of design and operation. . . ."

Section 11 of the proposed ordinance to which your request refers, reads, in part, as follows:

"It is understood and agreed by and between the City of Huntsville, Alabama, and Southern Landfills, Inc., that the operation of a sanitary landfill is an engineering project, and that the design, operation, and supervision of a sanitary landfill is of prime importance in the granting of this franchise. One of the prime considerations of the City of Huntsville in the granting of this franchise is the skill and experience of Mr. Tom D. Cochran in the engineering requirements and in the planning and operation of a sanitary landfill. It is understood and agreed that should the services of Mr. Tom D. Cochran cease to be available, some other person of comparable experience, suitable to the City, may be substituted. By the acceptance of this franchise, Southern Landfills, Inc., agrees to continuously maintain the services of Mr. Cochran or some other person experienced in the engineering, planning, and management of a sanitary landfill. . . ."

Act No. 217, Acts of Alabama 1967, page 259, as amended by Act No. 769, Acts of Alabama 1967, page 1625, requires that all expenditures of public funds by municipalities in the amount of \$500.00 or more for labor, services or work, or for the purchase or lease of personal property must be made on a competitive bid basis. Said statute provides that all contracts for services be limited to periods not exceeding one year.

Section 2 of Act No. 217, as amended, *supra*, exempts from the requirements of said statute contracts for services of individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part. See Quarterly Report of Attorney General, Volume 128, page 29. Also exempted are contracts which by their very nature are impossible of award by competitive bidding.

The facts presented show not only that the engineering skill of the person named in the above-quoted portion of Section 11 of the proposed ordinance, here considered, is important to the agreement or contract but also that the site of the real property is desirable when the surrounding land and the haul distances are considered.

Premises considered, I am of the opinion that said proposed ordinance is not subject to the requirements of Act No. 217, as amended, *supra*.

Yours very truly,
MacDONALD GALLION
Attorney General

September 12, 1969

Honorable Joe L. Payne
Attorney, City Board of Education
P. O. Drawer 527
Huntsville, Alabama 35804

Schools — Funds — Leases — City Boards of Education.

The City Board of Education of Huntsville is not authorized to lease a site for a fifty year term from the United States of America and erect at its expense from school funds an elementary school on such lease site (Redstone Arsenal) and operate the school after its completion.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion of this office under date September 3, 1969, is as follows:

"The City Board of Education of Huntsville, Alabama, has asked me to request an Opinion from you.

"The Deputy Post Commander of Redstone Arsenal has suggested to the City Board of Education of Huntsville that it construct an elementary school on Redstone Arsenal. Enclosed is a copy of a letter from Col. J. N. Jean dated July 31, 1969, making this suggestion. You will note from the letter that Col. Jean states that there is very little likelihood that the chosen site in their housing area could be deeded and transferred from Federal ownership, but that he felt sure that a long term lease could be obtained. He suggested as a model a public school at Patrick Air Force Base in Florida with a 50-year lease.

"Therefore, the question for which an Opinion is requested from you is as follows:

"If the United States of America delivered to the City Board of Education a lease for a 50-year term, could the City Board of Education of Huntsville, Alabama pay for the construction of an elementary school on such leased site and which school,

after its completion, would be operated by the City Board of Education of Huntsville, Alabama?"

In a long line of opinions from this office it has been ruled that public school funds, district or county, may not be expended in making permanent improvements of a public school nature on property owned by someone else other than the State or local boards of education. This is true even though the property is devoted to public school purposes. Biennial Report of Attorney General 1924-26, page 261; 1926-28, page 275; 1928-30, page 357; 1930-32, page 529; Quarterly Report of Attorney General, Volume 1, page 41.

It is also noted that certain special district school taxes for public school purposes must be used for the exclusive benefit of the public schools of such school tax district. Title 52, Section 272, Code of Alabama 1940, Recompiled 1958; **City Board of Education v. Williams**, 231 Ala. 137, 139; 163 So. 802.

By letter dated June 5, 1964, Dr. A. R. Meadows, the then State Superintendent of Education, wrote Dr. LeRoy Brown, Superintendent, Anniston Public Schools, as follows:

"I know of no State Board regulation or policy that would approve the Anniston City Board of Education's administration of the Fort McClellan Elementary School. Craig Field in Dallas County operated an elementary school and the State Board of Education has not given approval for the Dallas County Board of Education to operate such school. Maxwell Field is operating an elementary school. Camp Rucker is operating a school on the Government property.

"It is my recommendation that the Anniston City Board of Education not attempt to administer a school that is not within the city limits of Anniston and is not a boundary line school."

Following this letter and on June 17, 1964, in an opinion to Honorable Edgar W. Branyon, Jr., President, Anniston City Board of Education, this office ruled that the Anniston City Board of Education may not legally operate an elementary school located on the Federal installation at Fort McClellan, absent statutory or other authority for such operation.

It is possible, though not probable, that if such a school is built on Federal property that the City Board of Education could in a few years or sooner lose it all.

It is my opinion that your inquiry should be and is answered in the negative.

Yours very truly,
MacDONALD GALLION
Attorney General

September 25, 1969

Honorable A. W. Steineker, Jr.

Chief Examiner

Examiners of Public Accounts

State of Alabama

Montgomery, Alabama

Examiners of Public Accounts—Expenses—Employment,
Employers and Employees.

Taxi fare to and from an employee's base station is
an illegitimate item of expense and cannot be paid by
the employer.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of August
18, 1969 is as follows:

"During the course of a current examination of the State Highway Department, we have found that an employee has claimed reimbursement for taxi fare from his home to the state motor pool and from the motor pool back to his home on those days that he was required to travel on state business.

"The employee under consideration lives in the City of Montgomery and is based at the State Highway Department building. The State motor pool is located directly across the street from the State Highway Department building.

"You have ruled in your opinion to Honorable Ralph P. Eager-ton, Chief Examiner, under date of December 6, 1967 (Quarterly Report of Attorney General, Volume 129, page 42), that the official station or base of an employee was the building which is considered by both the employer and employee to be the place from which will emanate all work of the employee. You further ruled that an employee traveling on business of the state away from his base station is entitled to travel expense in accordance with the applicable rules and statutes even though such travel is located within the city or county where his base station is located. However, it was further held in your ruling that an employee may not live in a place other than the place of his permanent base station and receive travel expense to the place of his base station.

"I request your opinion as to whether the taxi fare claim by this employee of the Highway Department from his home to the state motor pool and from the state motor pool back to his home on those days that he was required to travel on business of the state is a legitimate item of expense."

The answer to your question is in the negative.

As I stated to you in my opinion of December 6, 1967, found in Volume 129, Quarterly Report of the Attorney General, page 42, an employee of the State of Alabama is entitled to receive reimbursement of expenses, as limited by law, while "traveling in the service of the state of Alabama."

In that opinion I also said that an employee ordinarily is "traveling in the service of the state of Alabama" when he leaves his "base station" on or about the business of his employer. I further said in that same opinion that travel "to" the "base station" is the personal concern of the employee, but travel from the "base station" on the business of the state would be the concern of the employer and in furtherance of his affairs and as a consequence would be entitled to receive reimbursement for expenses up to an amount limited by law and regulation.

In the factual situation posed by you, the employee's "base station" is the Highway Department Building in the City of Montgomery, Alabama.

Consequently, I would conclude that this particular employee's business for the State of Alabama would ordinarily—certainly there could be exceptions, but none was presented in your query—commence or start from the "base station," the State Highway Department Building.

Therefore, it is my opinion that travel to and from the "base station," the State Highway Building, would be "to" the place of his employment, and not "about" the work of his employer or in furtherance of the business of the State; and, therefore, the item of expense claimed is not a legitimate item of expense that can legally be paid and, hence, must be rejected.

Yours very truly,
MacDONALD GALLION
Attorney General

September 30, 1969

Honorable Earl D. James
Mayor
City of Montgomery
Montgomery County
Montgomery, Alabama 36104

Honorable John F. Watkins
Executive Director
Alabama League of Municipalities
24 South Hull Street
Montgomery, Alabama 36104

Appropriations—Funds—Municipalities:

A municipality in the State of Alabama may contribute funds to the Alabama League of Municipalities for the

purpose of assisting to defray the cost of constructing a headquarters building for said organization.

Opinion by Assistant Attorney General Gish.

Dear Sirs:

Your request, Mr. James, for an official opinion dated September 23, 1969, is as follows:

"The City of Montgomery is a member of the Alabama League of Municipalities and has been for a great number of years. We feel that membership in the League is of great benefit to the City of Montgomery.

"The Executive Committee of the League has resolved to request each member municipality to contribute funds to the cost of a new headquarters building to be located in Montgomery, and the City of Montgomery wants to contribute its pro rata share to the building fund.

"I request your official opinion as to whether the City of Montgomery may legally make a contribution to the Alabama League of Municipalities for the purpose of assisting it in the construction costs of the new building.

"It is important to the City of Montgomery, as well as the other cities in the state, that this request be given your prompt attention and I, therefore, urge that you give me an early reply."

Your request, Mr. Watkins, for an official opinion dated September 22, 1969, is as follows:

"The Alabama League of Municipalities, an unincorporated association, has, over the past thirty years, among other things, represented the municipalities of this state in the Legislature, has furnished legal opinions to member cities, and provided numerous other services for the benefit of the municipalities and their officials. The League is considering constructing a headquarters building to house the staff, files, records, and printing and office equipment of the League.

"The League affairs are conducted under the jurisdiction of an Executive Committee and that committee, in a duly scheduled meeting, has resolved to request each member municipality of the League to contribute funds to the cost of said headquarters building.

"Your official opinion is requested as to the legality of an expenditure of public funds by a municipality of the State of Alabama to be used specifically and exclusively to help defray the expense of constructing a headquarters building for the Alabama League of Municipalities."

Attached to the request quoted in the preceding paragraph are documents which show that in addition to those functions specifically mentioned in said request, the Alabama League of Municipalities performs a number of services which are beneficial to the officers and employees of the municipalities of this State. Among other things, said documents show that said League, during the Fall of 1968, held meetings in each Congressional District of the State for the purpose of orienting newly elected officials for their duties in municipal office; that said League continuously cooperates with Auburn University, the University of Alabama, the Alabama Police Academy, the Association of Fire Chiefs of Alabama, the Alabama Water and Sewer Operators Association, the Alabama Inspection Officers Association, and others, in the promotion of work shops, training courses and seminars for municipal employees and officers; that said League daily answers for municipal officers and employees special inquiries, either by telephone or correspondence; and that in addition to publishing its monthly magazine, the Alabama Municipal Journal, said League periodically publishes news letters for the benefit of members of municipal governing bodies, municipal clerks and municipal attorneys.

The question of authority of a municipality to contribute funds to the Alabama League of Municipalities has never been presented to the appellate courts of this State. However, the authority to make such contributions has been upheld in other jurisdictions. See **Hays v. City of Kalamazoo et al.**, 316 Mich. 443, 25 NW 2d 787, and **People ex rel. Schlaeger v. Bunge Bros. Coal Co.**, 392 Ill. 153, 64 NE 2d 365. Cf. **Green v. Kitchin**, 229 N. C. 450, 50 SE 2d 545, in which the Court approved the payment by a municipality for the attendance of a police officer at a training course held at the Police Academy of the Federal Bureau of Investigation.

It is well established that a municipality may exercise those powers granted in express words, those necessarily or fairly implied in or incident to powers expressly granted, or those essential to the declared objectives and purposes of the corporation. **City of Bessemer et al v. Huey**, 247 Ala. 12, 22 So. 2d 325, and **Johnson v. Sheffield et al.**, 236 Ala. 411, 183 So. 265.

The statutes of this State vest in the governing body of a municipality the control of the finances of such municipality. In the absence of any specific direction as to the application of specific revenues, the municipal governing body may apply them in any manner not inconsistent with the applicable State statutes. The use of municipal funds, except those required for specific purposes, is usually subject alone to the discretion of the local authorities. See **Johnson v. City of Sheffield, et al.**, *supra*.

Over thirty-five (35) years ago the Supreme Court of Alabama held in the case of **Fitts v. Commission of City of Birmingham, et al.**, 224 Ala. 600, 142 So. 354, that the City of Birmingham has the necessarily implied power to protect and promote its well-being before the

Legislature and to incur and pay compensation therefor. In so holding the Court stated, in part, as follows:

“ . . . Moreover, there may be a good reason for permitting the towns and cities to incur the expense of obtaining favorable legislation through an attorney or other agent, and not granting the same right to the counties. The counties have the right to rely upon the legislative representatives to protect the interest of their respective counties, while the cities and towns cannot repose the same confidence in them as there may be several towns and cities in the same county and as to which rivalry may exist. . . . ”

Discussing extensively the reasoning of the Court in the **Fitts** case, supra, this office held in the opinion reported in Quarterly Report of Attorney General, Volume 37, page 79, that the City of Mobile is authorized to be a member of the National Rivers and Harbors Congress, which organization is authorized to study waterways and shipping developments and to aid in securing favorable legislation in Congress in reference to such matters. In said opinion the payment of the membership fee and the expenses of representatives of the organization were approved.

We have also held in an opinion rendered to Honorable D. Hardy Riddle, Judge of Probate, Talladega County, under date of February 14, 1956 (not reported), that a municipality is authorized to contribute funds to the Coosa-Alabama River Improvement Association, Inc.

In the opinion reported in Quarterly Report of Attorney General, Volume 121, page 15, we held that the City of Birmingham may enter into a contract with a nonprofit corporation under which said corporation agreed to protect the interest and promote the well-being of said City in its relations with the departments and agencies of the United States of America.

We understand that the Executive Committee of the Alabama League of Municipalities decided in a recent meeting of such Committee that the most efficient and economical method of constructing the headquarters building to which your requests refer will be accomplished by the use of funds contributed to said League by the municipalities of this State rather than by any other means of financing the construction of said building.

Based upon the authorities cited hereinabove, it is clear that the expenditure of funds by the municipalities of this State to support and secure the services of the Alabama League of Municipalities should be classified as an authorized municipal purpose. It is also clear that the amount of any such expenditure or contribution is dependent, within the discretion of the governing body of each municipality, upon the project to be financed.

Therefore, you are advised that the City of Montgomery and each of the other municipalities in this State may contribute funds to the

Alabama League of Municipalities for the purpose contemplated by your requests.

Yours very truly,
MacDONALD GALLION
Attorney General

September 30, 1969

Honorable J. P. King
Judge of Probate
Blount County
Oneonta, Alabama

National Guard — Military Department — License Tags --
Exemptions — Opinions Overruled.

1. Each officer, warrant officer and enlisted man who is an active member of the National Guard of Alabama or of the United States Armed Forces Reserve Organizations is entitled to a free license tag for one passenger vehicle which he owns and operates, pursuant to Act No. 739, Acts of Alabama 1969, approved September 12, 1969.
2. Each officer, warrant officer and enlisted man serving on active duty in the armed forces who is a resident of Alabama and who was a resident upon entering active service, is entitled to a free license tag for one passenger vehicle which he owns and operates. Act No. 739, supra.
3. Each officer and enlisted man serving in the United States Army who is assigned by the Defense Department as an instructor or sergeant-instructor with the National Guard of Alabama is entitled to a free license tag for one passenger vehicle which he owns and operates. Act No. 739, supra.
4. Each active member of the National Guard of Alabama is entitled to a distinctive tag, in addition to one free tag, for each passenger vehicle or pick-up truck he personally owns, upon payment of the regular license fee required by law. Act No. 308, Acts of Alabama 1955, as amended by Act No. 253, Acts of Alabama 1959. Quarterly Report of the Attorney General, Volume 113, page 75.
5. Probate Judge or License Commissioner issuing free license tag may collect the issuance fee enumerated in Title 51, Section 714, Code of Alabama 1940, Recomplied 1958.

Opinion by Deputy Attorney General Bookout.

Dear Judge King:

Your request for an official opinion dated September 16, 1969 is as follows:

"Would you please send us information on the issuing of National Guard Tags:

"1. Will enlisted men be able to get their tags free except for tax?

"2. Will all active members of the Armed Forces be entitled to a free license tag?

"3. Will all active reservists be entitled to a free tag?

"4. Is there a limit to the number of free license tags each person may receive?

"5. Is the issuance of a distinctive plate mandatory for all National Guard members?

"6. May an issuance fee still be charged by the Probate Judge?

"7. Will there be any change in the procedure by the State Military Department in certifying the eligibility of guardsmen for free tags and/or distinctive plates?"

Act No. 739, Acts of Alabama 1969, approved September 12, 1969, amends Title 35, Section 101, Code of Alabama 1940, and reads in pertinent part as follows:

" . . . There shall be exempt from the operation of the privilege or license tax and registration fee now or hereafter to be levied on automobiles and motor vehicles by the State of Alabama, passenger vehicles owned and operated by the Federal Government, or any passenger vehicle owned and operated by officers and enlisted men actually serving in the United States Army who are assigned by the Department of Defense as instructors or sergeant-instructors with the National Guard of Alabama or by all officers, warrant officers, and enlisted men who are serving on active duty in the armed forces of the United States who are residents of Alabama at the time the exemption is claimed and who entered active service from Alabama and were residents of Alabama at the time of entering service or by all commissioned officers, noncommissioned officers, and enlisted men of the active National Guard of Alabama and active members of the United States Armed Forces Reserve Organizations. Provided that each individual who is entitled to the exemption from the operation of the motor vehicle or license tax and registration fee levied on automobiles and motor vehicles by the State of Alabama shall be entitled to such exemption for only one passenger vehicle;"

In reply to your first three questions, the above Act clearly exempts from the license tax or registration fee for motor vehicles all officers, warrant officers and **enlisted men** who are active members of the Alabama National Guard or of the United States Armed Forces Reserve

Organizations. Such exemption, likewise, extends to each officer, warrant officer and enlisted man serving on active duty in the armed forces, provided he is a resident of Alabama at the time he claims the exemption and was a resident at the time he entered active service. Likewise, the exemption in Act No. 739, supra, applies to each officer and enlisted man serving in the United States Army who is assigned by the Department of Defense as an instructor or sergeant-instructor with the Alabama National Guard.

In answer to your fourth question, Act No. 739, supra, provides that each guardsman and serviceman, "... shall be entitled to such exemption for only one passenger vehicle; it being the intention of this legislature to limit such exemption to one per individual serviceman. . . ."

The issuance of distinctive tags to members of the National Guard is not mandatory. An active member of the National Guard (Army or Air) may apply for a distinctive license plate in lieu of the standard license tag normally issued. The one free tag issued pursuant to Act No. 739, supra, may be a standard tag or a distinctive tag at the request of the guardsman. In addition to one free tag, each active member of the Alabama National Guard is entitled to a distinctive license plate for each personally owned, private, passenger vehicle registered in his name, upon payment of the regular license tax prescribed by law. Act No. 308, Acts of Alabama 1955, as amended by Act No. 253, Acts of Alabama 1959. Also, see Quarterly Report of the Attorney General, Volume 113, page 75.

In reply to your sixth question, it is my opinion that an issuance fee may be charged for issuing free license tags pursuant to Act No. 739. That Act provides that, "... upon presentation of such proper identification to the county officials of the county in which said vehicle is ordinarily kept or stored said official of the state of Alabama shall issue a license tag to be attached to said vehicle, without, however, charging the usual fees for registration or licensing of said vehicles." The fee charged for issuing license tags enumerated in Title 51, Section 714, Code of Alabama 1940, Recompiled 1958, may be charged in this instance since it is not a registration or licensing fee. Quarterly Report of Attorney General, Volume 17, page 183, is inapplicable in view of Title 51, Section 714, supra, and such opinion is hereby overruled.

In response to your seventh question, I have been advised by the office of the Adjutant General that a new certificate of membership and application for National Guard license tags has been prepared. Since Act No. 739 requires proper identification of persons entitled to the exemption granted therein, the Adjutant General has issued to all National Guard units AGO Form #7 (Revised 18 Sep 69) which, when properly completed and authenticated will entitle the bearer to one free license tag, either distinctive or standard.

For your further information in this regard, **only one** such form will be issued to each guardsman making application. AGO Form #7

will serve as identification for issuance of the free license tag and if additional distinctive tags are requested, they may be issued without additional forms or certificates from the Military Department. Since the original certificate is kept on file in the office of the issuing official, it may serve as identification for subsequent purchases of distinctive plates by such guardsmen.

Very truly yours,
MacDONALD GALLION
Attorney General

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